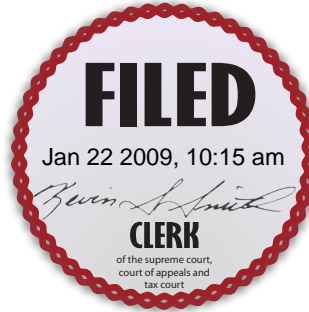


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

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**IN THE
COURT OF APPEALS OF INDIANA**

MELISSA P.,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 03A04-0807-JV-442
)	
BARTHOLOMEW COUNTY DEPARTMENT OF)	
CHILD SERVICES,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE BARTHOLOMEW JUVENILE AND CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
The Honorable Heather M. Mollo, Referee
Cause Nos. 03C01-0702-JT-308, 03C01-0702-JT-309

January 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Melissa P. appeals the termination of her parental rights to her two daughters, K.P. and M.P. Finding the evidence supports the court's determination, we affirm.

FACTS AND PROCEDURAL HISTORY

Melissa gave birth to K.P. on April 2, 2003, during a relationship Melissa had with Todd P. On January 18, 2005, Melissa gave birth to M.P., whose father was Melissa's live-in boyfriend, Justin P.

On April 13, 2005, Melissa took M.P. to the hospital because M.P. was crying. Doctors discovered M.P.'s right arm was broken. In addition, tests revealed seven old fractures of M.P.'s ribs. Justin reported being at work when M.P.'s arm was injured. Melissa told a detective that she may have caused M.P.'s injuries when she was frustrated.

That day, Bartholomew County Department of Child Services ("DCS") removed M.P. and K.P. from Melissa and Justin's care. Two days later the court found M.P.'s injuries were consistent with abuse or neglect and entered a detention order for both girls. In August 2005, the court determined the girls were CHINS. The case plan required Melissa to:

- (1) Cooperate with [DCS] and its representatives;
- (2) Actively participate in the development of the Case Plan;
- (3) Maintain consistent contact with Family Case Manager and report any household changes;
- (4) Adhere to and participate in the visitation plan;
- (5) Demonstrate appropriate parenting skills during visits;
- (6) Obtain and maintain adequate housing;
- (7) Obtain and maintain suitable employment or source of income;
- (8) Attend, participate in and successfully complete individual counseling

- (home-based or outpatient);
- (9) Attend, participate in and successfully complete psychological evaluation and complete the recommended items;
- (10) Attend participate in and successfully complete group-based parenting classes;
- (11) Successfully complete substance random drug screens; and
- (12) Obey the laws of the State of Indiana and United States of America.

(Petitioner's Ex. 1, Order on Status Hearing filed Jan. 12, 2006 at 2.)

On February 19, 2007, DCS filed a petition to terminate all parental rights as to K.P. and M.P. After a hearing on the petition, the court found, as to Melissa, the reasons leading to the children's removal had not and would not be remedied, continuation of the parent-child relationship posed a threat to the children's well-being, and termination was in the children's best interests.¹ Accordingly, the court terminated Melissa's rights to both girls.

¹ In finding termination in the girls' best interests, the court found:

21. Termination of the parent-child relationship between Melissa [and] her children is in the best interests of the children given the lack of compliance to the case plan by [Melissa]. [Melissa] has been unable to take care of her own needs. She was not able to maintain a home or a job for any significant period of time. More concerning, is the fact that she failed to be able to control, maintain and ensure for the safety of the children even after many months of supervised visitation and services. Last, [Melissa] has exhibited a lack of concern for the serious injuries sustained for a very small child.

(App. at 38.) Although Melissa does not challenge the court's determination regarding the children's best interests, we note the court's findings and conclusion are supported by the record.

DISCUSSION AND DECISION²

We are highly deferential when reviewing termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We do not reweigh evidence or judge the credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied sub nom. Peterson v. Marion County OFC*, 822 N.E.2d 970 (Ind. 2004). Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.*

When a court enters specific findings of fact, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, whether the findings support the judgment. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). In deference to the juvenile court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied sub nom. Swope v. Noble County Office of Family & Children* 735 N.E.2d 226 (Ind. 2000), *cert. denied* 534 U.S. 1161 (2002). A judgment is clearly erroneous only if the findings do not support the juvenile court's conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98,

² At the time we drafted our opinion, DCS had not file a brief on appeal. Thereafter, DCS moved to file a belated appellee's brief. We deny that request by separate order issued today.

Where an appellee does not respond to an argument by an appellant, we may reverse if we find *prima facie* error. *In re Paternity of J.C.*, 819 N.E.2d 525, 527 (Ind. Ct. App. 2004). *Prima facie* errors are those that appear "at first sight, on first appearance, or on the face of it." *Id.* Application of this standard relieves us of the burden of developing arguments for the appellee. *Id.* "This circumstance does not, however, relieve us of our obligation to decide the law as applied to the facts in the record in order to determine whether reversal is required." *Vukovich v. Coleman*, 789 N.E.2d 520, 524 n.4 (Ind. Ct. App. 2003).

102 (Ind. 1996).

A petition to terminate a parent-child relationship must allege:

- (A) [o]ne (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- * * * * *
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and,
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

Melissa asserts the court erred in finding the conditions resulting in the children's removal had not been remedied. When determining whether there is a reasonable probability the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied sub nom. Timm v. Office of Family & Children*, 753 N.E.2d 12 (Ind. 2001). However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.*

Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied* 774 N.E.2d 515 (Ind. 2002). The court may also properly consider the services offered to a parent, and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* A department of child services is not obliged to rule out all possibilities of change; it need establish only a reasonable probability a parent's behavior will not change. *See In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). "[A] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied* 869 N.E.2d 456 (Ind. 2007).

The trial court found:

7. It was established by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the children's removal and the reasons for placement outside the home will not be remedied or that the continuation of the parent-child relationship poses a threat to the well-being of the children.

8. Sheryl Alyea began as family case manager in July, 2005. At that time, case plans were developed. Also, the dispositional decree set forth requirements. The parents were required to cooperate and maintain contact with the Department, visit with their children, maintain adequate housing and suitable employment, complete individual counseling, complete a parenting class, and complete a psychological evaluation and

recommended services.

9. Throughout the time the children have been in care, Melissa has failed to comply with the terms of the case plan and the dispositional decree. Melissa was not able to maintain any consistent employment throughout the case. She worked at several different places, but none of her jobs lasted longer than one month. The Department's homemaker began working with her in late 2005 and continued services for approximately six to eight months. One of the goals was to assist Melissa in obtaining employment. Ms. LaFollette, the homemaker, helped Melissa contact Workforce One as a resource, but Melissa did not follow through. The homemaker also set goals to assist Melissa with maintaining her home and a budget, but Melissa was not successful on those goals. Often, Ms. LaFollette would schedule appointments only to find that [Melissa] was not home, or that her apartment was full of people and she would be denied access. On other occasions, [Melissa] would deny access due to the apartment being dirty. [Melissa] maintained a home from late 2005 until the summer of 2006. She was unable to financially maintain this apartment and her electricity was shut off. Ms. LaFollette observed spoiled food in the refrigerator. She lost her housing assistance and had to move from her apartment.

10. Since the eviction, Melissa has not maintained stable housing. She has lived with several different family members and with friends. Her whereabouts were unknown during much of 2007 and continued to be so through the time of the termination hearing. [Melissa] would report to Ms. Alyea that she was living with a friend but would refuse to provide an address or telephone number. Communication was not even minimal in 2007. Case conferences were held frequently up until the summer of 2006. However, after that time it was difficult to find [Melissa] to schedule additional conferences.

11. [Melissa] did complete a psychological evaluation and parenting assessment. The parenting assessment concluded a low prognosis for reunification. The psychological [assessment] revealed that [Melissa] had borderline intellectual abilities and that she viewed the world in a very hostile way. This information was shared with service providers so that appropriate learning styles could be utilized. [Melissa] was strongly encouraged by both the Department and her individual counselor to seek a medical evaluation as an aid to her hostility. Her counselor, Pat Corbin, was concerned that some of [Melissa's] resistance was psychologically related.

12. [Melissa] failed to participate in services as directed. She was provided individual counseling through Family Services. She was

dismissed from the program three times due to her inconsistent attendance. Pat Corbin allowed her to return each time, but Melissa continued to miss appointments. She eventually stopped attending all together. As noted in paragraph 11 above, it was recommended that she undergo an evaluation to determine if medication would be beneficial. She eventually completed the evaluation, but many months after it was first discussed. [Melissa] was prescribed medication, but she did not take it for a very long period of time.

13. [Melissa] was provided opportunities to visit with the children. She also participated in a parenting class. Pat Corbin also worked with her on parenting skills during their counseling sessions. Crystal Nevins, the White's case manager, provided supervision for many of the visits. Ms. Nevins also provided parenting instruction. However, there was no substantial improvement in her ability to parent even at visitation increment[s] of one to two hours. Ms. Nevins stated that it was hard for [Melissa] to maintain calm and set boundaries for safety. She needed constant reminders to keep the girls safe. [Melissa] was observed to be inattentive; she often would become engrossed in such things as her cell phone or a game. She had to be reminded to pick up choking hazards and to watch the children around stairs. She needed help to resolve even minor behavior issues. [Melissa] was observed to be bored at visitations, wanting to know when the session was scheduled to end. Visits occurred in her home for a period of time, but then returned to the White's office because her housing was not appropriate. Ms. Nevins stated that even at the time of the termination hearing that she did not believe that [Melissa] could properly care for the children. She became easily preoccupied during visits and had a difficult time engaging with the children. Ms. Nevins stated that she believed that termination of the parent child relationship was in the children's best interests.

14. [Melissa] tested positive for drugs at times during the case. She was also arrested on one occasion for illegal consumption. Such activities were not in compliance with the case plan or dispositional decree. Also, [Melissa] failed to complete her GED, which was a term of the case plan. This originally was a goal identified by [Melissa]. Ms. Alyea was supportive of this goal believing it would assist her in obtaining a job.

15. At the time of the termination hearing, [Melissa] reported that she had recently moved in with some friends. A few weeks earlier she had reported that she was living with her brother, because she had a fight with her grandmother and had moved from her home. She was not working and had not worked in several months. She had recently had a baby and was caring for her child. [Melissa] denied causing the injuries to [K.P.] which led to the children's removal from the home.

(App. at 34-37.)

Melissa does not challenge the findings. Rather, she reiterates her testimony and her mother's testimony, both of which contradict the court's ultimate determination. We are not permitted to consider that evidence, because it is not favorable to the trial court's judgment. *See In re D.D.*, 804 N.E.2d at 264 (we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment).

When we reviewed the record, we found support for the trial court's findings in the testimony of other witnesses. In light of the court's extensive findings, we find no error in the determination the circumstances leading to the children's removal were not likely to be remedied. Accordingly, we affirm the termination of Melissa's parental rights.

Affirmed.

BRADFORD, J., and FRIEDLANDER, J., concur.